IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8122 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASIM @ BIRIYANI ABDULSATTAR GAZI

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 30.05.2000 Annexure : A passed by Respondent No.2 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on five I.P. Code cases lodged against the detenu and out of said five cases, four cases have been lodged in Godhra Railway Police Station and one case has been lodged in Baroda Railway Police Station and all the five cases lodged against the detenu are pending with the Investigating Officer for investigation. The detaining authority has placed reliance on statements of three witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the said statements of three anonymous witnesses on 29.5.2000 and passed an order of detention on the very next day i.e. 30.5.2000 which is challenged in this writ petition.

3. Though Rule has been served upon respondent nos.2 and 3, they have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in it. Here in this matter, respondent no.1 i.e. State of Gujarat has filed affidavit-in-reply on 19th October, 2000. It is taken on record.

4. Shri Tirmiji, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of three anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act, but looking to the respective dates of statements, date of verification of said statements and date of passing order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India.

5. Shri Tirmiji has placed reliance on case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. He is required to do such exercise to verify the correctness and genuineness of the facts stated in said statements. He had also to verify as to whether persons are fictitious or real one. When he verified the statements of three witnesses on 29.5.2000 and when he passed an order of detention on the very next

day i.e. on 30.5.2000, it can be said that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. Looking to the facts and circumstances of the present case, this present case falls within the four corners of the cited case of Kalidas Chandubhai Kahar (supra) which is cited by Shri Tirmiji.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 30-05-2000 passed by Respondent no.2 which is at Annexure:A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 20/10/2000. (H.H.MEHTA,J.)
ccshah